



United States Attorney  
Southern District of West Virginia

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SEP - 6 2011

TERESA L. DEPPNER, CLERK  
U.S. District Court  
Southern District of West Virginia

April 11, 2011

John Carr, Esquire  
118 Capitol Street, Suite 401  
Charleston, WV 25301

Re: United States v. Jamal Adil Makhlouf  
Criminal No. 3:11-00074 (USDC SDWV)

Dear Mr. Carr:

This will confirm our conversations with regard to your client, Jamal Adil Makhlouf (hereinafter "Mr. Makhlouf"). As a result of these conversations, it is agreed by and between the United States and Mr. Makhlouf as follows:


1. **PENDING CHARGES.** Mr. Makhlouf is charged in four counts of a Twenty-Four count indictment as follows:

- (a) Count One charges Mr. Makhlouf with a violation of 18 U.S.C. § 371 (conspiracy to transport, receive, possess, purchase and sell contraband cigarettes); and
- (b) Counts Two, Thirteen and Sixteen charge Mr. Makhlouf with violations of 18 U.S.C. § 2342(a) and 2 (aiding and abetting the transportation, receipt, possession and purchase of contraband cigarettes).

2. **RESOLUTION OF CHARGES.** Mr. Makhlouf will plead guilty to Count One of said indictment, which charges him with a violation of 18 U.S.C. § 371. Following final disposition, the United States will move the Court to dismiss Counts Two, Thirteen and Sixteen in Criminal No. 3:11-00074 as to Mr. Makhlouf.

3. **MAXIMUM POTENTIAL PENALTY.** The maximum penalty to which Mr. Makhlouf will be exposed by virtue of this guilty plea is as follows:

- (a) Imprisonment for a period of 5 years;
- (b) A fine of \$250,000, or twice the gross pecuniary gain or

  
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twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;


- (c) A term of supervised release of 3 years;
- (d) A mandatory special assessment of \$100 pursuant to 18 U.S.C. § 3013; and
- (e) An order of restitution pursuant to 18 U.S.C. §§ 3663 and 3664.

4. **SPECIAL ASSESSMENT.** Prior to the entry of a plea pursuant to this plea agreement, Mr. Makhoulouf will tender a check or money order to the Clerk of the United States District Court for \$100, which check or money order shall indicate on its face the name of defendant and the case number. The sum received by the Clerk will be applied toward the special assessment imposed by the Court at sentencing. Mr. Makhoulouf will obtain a receipt of payment from the Clerk and will tender a copy of such receipt to the United States, to be filed with the Court as an attachment to this plea agreement. If Mr. Makhoulouf fails to provide proof of payment of the special assessment prior to or at the plea proceeding, the United States will have the right to void this plea agreement. In the event this plea agreement becomes void after payment of the special assessment, such sum shall be promptly returned to Mr. Makhoulouf.

5. **PAYMENT OF MONETARY PENALTIES.** Mr. Makhoulouf agrees not to object to the District Court ordering all monetary penalties (including the special assessment, fine, court costs, and any restitution) to be due and payable in full immediately and subject to immediate enforcement by the United States. So long as the monetary penalties are ordered to be due and payable in full immediately, Mr. Makhoulouf further agrees not to object to the District Court imposing any schedule of payments as merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment.

6. **COOPERATION.** Mr. Makhoulouf will be forthright and truthful with this office and other law enforcement agencies with regard to all inquiries made pursuant to this agreement, and will give signed, sworn statements and grand jury and trial testimony upon request of the United States. In complying with this provision, Mr. Makhoulouf may have counsel present except when appearing before a grand jury.

7. **USE IMMUNITY.** Unless this agreement becomes void due to a violation of any of its terms by Mr. Makhoulouf, and except as

  
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expressly provided for in stipulation of facts paragraph 9 below, nothing contained in any statement or testimony provided by Mr. Makhoulf pursuant to this agreement, or any evidence developed therefrom, will be used against Mr. Makhoulf, directly or indirectly, in any further criminal prosecutions or in determining the applicable guideline range under the Federal Sentencing Guidelines.

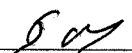
8. **LIMITATIONS ON IMMUNITY.** Nothing contained in this agreement restricts the use of information obtained by the United States from an independent, legitimate source, separate and apart from any information and testimony provided pursuant to this agreement, in determining the applicable guideline range or in prosecuting Mr. Makhoulf for any violations of federal or state laws. The United States reserves the right to prosecute Mr. Makhoulf for perjury or false statement if such a situation should occur pursuant to this agreement.

9. **STIPULATION OF FACTS AND WAIVER OF FED. R. EVID. 410.** The United States and Mr. Makhoulf stipulate and agree that the facts comprising the offenses of conviction and relevant conduct include the facts outlined in the "Stipulation of Facts," a copy of which is attached hereto as "Plea Agreement Exhibit A."

Mr. Makhoulf agrees that if he withdraws from this agreement, or this agreement is voided as a result of a breach of its terms by Mr. Makhoulf, and he is subsequently tried on any of the charges in the indictment, the United States may use and introduce the Stipulation of Facts in the United States case-in-chief, in cross-examination of Mr. Makhoulf or of any of his witnesses, or in rebuttal of any testimony introduced by Mr. Makhoulf or on his behalf. Mr. Makhoulf knowingly and voluntarily waives, see United States v. Mezzanatto, 513 U.S. 196 (1995), any right he has pursuant to Fed. R. Evid. 410 that would prohibit such use of the Stipulation of Facts. If the Court does not accept the plea agreement through no fault of the defendant, or the Court declares the agreement void due to a breach of its terms by the United States, the Stipulation of Facts cannot be used by the United States.

The United States and Mr. Makhoulf understand and acknowledge that the Court is not bound by the Stipulation of Facts and that if some or all of the Stipulation of Facts is not accepted by the Court, the parties will not have the right to withdraw from the plea agreement.

10. **AGREEMENT ON SENTENCING GUIDELINES.** Based on the foregoing Stipulation of Facts, the United States and Mr. Makhoulf agree that the following provisions of the United States Sentencing

  
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Guidelines apply to this case.

USSG §2E4.1 and 2T4.1

Tax loss \$12,500 - \$30,000

Base offense level

12


The United States and Mr. Makhoulouf acknowledge and understand that the Court and the Probation Office are not bound by the parties' calculation of the United States Sentencing Guidelines set forth above and that the parties shall not have the right to withdraw from the plea agreement due to a disagreement with the Court's calculation of the appropriate guideline range.

**11. WAIVER OF APPEAL AND COLLATERAL ATTACK.** The parties reserve the right to appeal the District Court's determination of the adjusted offense level, prior to consideration of acceptance of responsibility, if the District Court's determination differs from that stated in paragraph 10 above. Nonetheless, Mr. Makhoulouf knowingly and voluntarily waives his right to seek appellate review of any sentence of imprisonment or fine imposed by the District Court, or the manner in which the sentence was determined, on any other ground whatsoever including any ground set forth in 18 U.S.C. § 3742, so long as that sentence of imprisonment or fine is below or within the Sentencing Guideline range corresponding to offense level 12. The United States also waives its right to seek appellate review of any sentence of imprisonment or fine imposed by the District Court, or the manner in which the sentence was determined, on any other ground whatsoever including any ground set forth in 18 U.S.C. § 3742, so long as that sentence of imprisonment or fine is within or above the Sentencing Guideline range corresponding to offense level 10.

Mr. Makhoulouf also knowingly and voluntarily waives the right to challenge his guilty plea and his conviction resulting from this plea agreement, and any sentence imposed for the conviction, in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255.

The waivers noted above shall not apply to a post-conviction collateral attack or direct appeal based on a claim of ineffective assistance of counsel.

**12. WAIVER OF FOIA AND PRIVACY RIGHT.** Mr. Makhoulouf knowingly and voluntarily waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without any


  
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Acknowledged and agreed to on behalf of the United States:

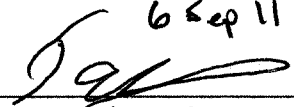
R. BOOTH GOODWIN II  
United States Attorney

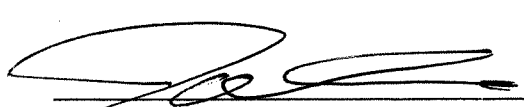
By:   
CHARLES T. MILLER  
Assistant United States Attorney

CTM/smw

I hereby acknowledge by my initials at the bottom of each of the foregoing pages and by my signature on the last page of this six-page agreement that I have read and carefully discussed every part of it with my attorney, that I understand the terms of this agreement, and that I voluntarily agree to those terms and conditions set forth in the agreement. I further acknowledge that my attorney has advised me of my rights, possible defenses, the Sentencing Guideline provisions, and the consequences of entering into this agreement, that no promises or inducements have been made to me other than those in this agreement, and that no one has threatened me or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

  
JAMAL ADKIL MAKHLOUF  
Defendant

6 Sep 11  
  
Date Signed

  
JOHN CARR  
Counsel for Defendant

6 Sep 11  
Date Signed

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 3:11-00074

JAMAL ADIL MAKHLOUF

STIPULATION OF FACTS

The United States and Jamal Adil Makhoulf stipulate and agree that the facts comprising the offense of conviction (Count One in the Indictment in the Southern District of West Virginia, Criminal No. 3:11-00074) and relevant conduct, include the following:

Between August 2010, until December 2010, at or near Huntington, West Virginia and elsewhere, defendant Jamal Adil Makhoulf, Basim Ali Talouzi, Fodie Manda Koita, and Yahya Willia conspired to purchase and transport contraband cigarettes as defined in 18 U.S.C. § 2341.

In August 2010 defendant Jamal Adil Makhoulf arranged for the purchase and transport of approximately 120,000 contraband cigarettes from Huntington, West Virginia to Burbank, Illinois, knowing the cigarettes did not bear evidence of the payment of applicable state cigarette taxes in any jurisdiction.

On two occasions in December 2010, defendant Jamal Adil Makhoulf conspired with Basim Ali Talouzi, Fodie Manda Koita, and Yahya Willia to purchase approximately 468,000 contraband cigarettes in Huntington, West Virginia.

The state cigarette excise tax on a carton of cigarettes in West Virginia is \$5.50. In the State of Illinois, the state cigarette excise tax is \$9.80 per carton.


The parties agree that the total tax loss as a result of the offense of conviction and relevant conduct is \$18,200.

PLEA AGREEMENT EXHIBIT A




This Stipulation of Facts does not contain each and every fact known to defendant Jamal Adil Makhlouf, and to the United States concerning his involvement and the involvement of others in the charges set forth in the Indictment, and is set forth for the limited purpose of establishing a factual basis for the defendant's guilty plea and relevant conduct.

Stipulated and agreed to:

  
\_\_\_\_\_  
JAMAL ADIL MAKHLOUF  
Defendant

4-26-2011  
Date

  
\_\_\_\_\_  
JOHN CARR  
Counsel for Defendant

6 Sep 11  
Date

  
\_\_\_\_\_  
CHARLES T. MILLER  
Assistant United States Attorney

9/6/2011  
Date

PLEA AGREEMENT EXHIBIT A

Court Name: US District Court/SDWV  
Division: 3  
Receipt Number: HUNT000599  
Cashier ID: smcash  
Transaction Date: 08/01/2011  
Payer Name: Jamal Adil Makhlouf

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CRIMINAL DEBT

For: Jamal Adil Makhlouf  
Case/Party: D-WVS-3-11-CR-000074-004  
Amount: \$100.00

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MONEY ORDER

Check/Money Order Num: 18484316  
Amt Tendered: \$100.00

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Total Due: \$100.00  
Total Tendered: \$100.00  
Change Amt: \$0.00

Only when bank clears the check,  
money order, or verifies credit of  
funds is the fee or debt officially  
paid or discharged. A 45 fee will  
be charged for a returned check.